

REFERENCE TITLE: commissions on court appointments

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

## **SB 1211**

Introduced by  
Senator Harper; Representative Gowan; Senator Gould; Representatives  
Biggs, Burges, Crump, Quelland, Stevens

### AN ACT

AMENDING SECTIONS 12-102, 16-955, 16-959 AND 38-431.08, ARIZONA REVISED STATUTES; RELATING TO THE COMMISSIONS ON APPELLATE AND TRIAL COURT APPOINTMENTS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 12-102, Arizona Revised Statutes, is amended to  
3 read:

4           12-102. Jurisdiction and duties; court appointments; contract  
5           and volunteer service providers; background  
6           investigations; fingerprinting

7       A. The supreme court shall discharge the duties imposed and exercise  
8 the jurisdiction conferred by the constitution and by law.

9       B. As a condition of appointment to any paid position in the judicial  
10 department that is defined as a noncriminal justice agency under federal law,  
11 including nomination for judicial office ~~by the commissions on appellate and~~  
~~trial court appointments~~ pursuant to article VI, ~~sections~~ SECTION 37 ~~and 41~~,  
13 Constitution of Arizona, the court shall require each applicant to furnish a  
14 full set of fingerprints to enable the court to conduct a criminal background  
15 investigation to determine the suitability of the applicant. The court shall  
16 submit the completed applicant fingerprint card to the department of public  
17 safety. The applicant shall bear the cost of obtaining the applicant's  
18 criminal history record information. The cost shall not exceed the actual  
19 cost of obtaining the applicant's criminal history record information.  
20 Applicant criminal history records checks shall be conducted pursuant to  
21 section 41-1750 and Public Law 92-544. The department of public safety is  
22 authorized to exchange the submitted applicant fingerprint card information  
23 with the federal bureau of investigation for a national criminal history  
24 records check.

25       C. The court may require each person who provides contract or  
26 volunteer services in the judicial department that is defined as a  
27 noncriminal justice agency under federal law to furnish a full set of  
28 fingerprints to enable the court to conduct a criminal background  
29 investigation. The court shall submit the person's completed fingerprint  
30 card to the department of public safety. The person shall bear the cost of  
31 obtaining the person's criminal history record information. The cost shall  
32 not exceed the actual cost of obtaining the person's criminal history record  
33 information. Criminal history records checks shall be conducted pursuant to  
34 section 41-1750 and Public Law 92-544. The department of public safety is  
35 authorized to exchange the person's submitted fingerprint card information  
36 with the federal bureau of investigation for a national criminal history  
37 records check.

38       Sec. 2. Subject to the requirements of article IV, part 1, section 1,  
39 Constitution of Arizona, section 16-955, Arizona Revised Statutes, is amended  
40 to read:

41           16-955. Citizens clean elections commission; structure

42       A. The citizens clean elections commission is established consisting  
43 of five members. No more than two members of the commission shall be members  
44 of the same political party. No more than two members of the commission  
45 shall be residents of the same county. No one shall be appointed as a member

1 who does not have a registration pursuant to chapter 1 of this title that has  
2 been continuously recorded for at least five years immediately preceding  
3 appointment with the same political party or as an independent.

4       B. The candidates for vacant commissioner positions shall be persons  
5 who are committed to enforcing this article in an honest, independent and  
6 impartial fashion and to seeking to uphold public confidence in the integrity  
7 of the electoral system. Each candidate shall be a qualified elector who ~~has~~  
8 ~~not~~, in the previous five years in this state, ~~HAS NOT~~ been appointed to,  
9 been elected to or run for any public office, including precinct  
10 committeeman, or served as an officer of a political party.

11       C. ~~Initially, the commission on appellate court appointments shall~~  
12 ~~nominate five slates, each having three candidates, before January 1, 1999.~~  
13 ~~No later than February 1, 1999, the governor shall select one candidate from~~  
14 ~~one of the slates to serve on the commission for a term ending January 31,~~  
15 ~~2004. Next, the highest ranking official holding a statewide office who is~~  
16 ~~not a member of the same political party as the governor shall select one~~  
17 ~~candidate from another one of the slates to serve on the commission for a~~  
18 ~~term ending January 31, 2003. Next, the second highest ranking official~~  
19 ~~holding a statewide office who is a member of the same political party as the~~  
20 ~~governor shall select one candidate from one of the three remaining slates to~~  
21 ~~serve on the commission for a term ending January 31, 2002. Next, the~~  
22 ~~second highest ranking official holding a statewide office who is not a~~  
23 ~~member of the same political party as the governor shall select one candidate~~  
24 ~~from one of the two remaining slates to serve on the commission for a term~~  
25 ~~ending January 31, 2001. Finally, the third highest ranking official holding~~  
26 ~~a statewide office who is a member of the same political party as the~~  
27 ~~governor shall elect one candidate from the last slate to serve on the~~  
28 ~~commission for a term ending January 31, 2000. For the purposes of this~~  
29 ~~section, the ranking of officials holding statewide office shall be governor,~~  
30 ~~secretary of state, attorney general, treasurer, superintendent of public~~  
31 ~~instruction, corporation commissioners in order of seniority, mine inspector,~~  
32 ~~senate majority and minority leaders and house majority and minority leaders.~~

33       D. C. One commissioner shall be appointed for a five-year term  
34 beginning February 1 of every year beginning with the year 2000. Before  
35 February 1 of each year beginning in the year 2000, the governor and the  
36 highest-ranking official holding a statewide office who is not a member of  
37 the same political party as the governor shall alternate filling such  
38 vacancies. The vacancy in the year 2000 shall be filled by the governor.

39       E. D. Members of the commission may be removed by the governor, with  
40 concurrence of the senate, for substantial neglect of duty, gross misconduct  
41 in office, inability to discharge the powers and duties of office or  
42 violation of this section, after written notice and opportunity for a  
43 response.

1        ~~F.~~ E. If a commissioner does not complete the commissioner's term of  
2 office for any reason, a replacement shall be selected within thirty days  
3 after the vacancy occurs. The highest-ranking official holding a statewide  
4 office who is a member of the political party of the official who nominated  
5 the commissioner who vacated office shall nominate the replacement, who shall  
6 serve as commissioner for the unexpired portion of the term. A vacancy or  
7 vacancies shall not impair the right of the remaining members to exercise all  
8 of the powers of the board.

9        ~~G.~~ F. Commissioners are eligible to receive compensation in an amount  
10 of two hundred dollars for each day on which the commission meets and  
11 reimbursement of expenses pursuant to title 38, chapter 4, article 2.

12        ~~H.~~ G. The commissioners shall elect a chair to serve for each  
13 ~~calendar year~~ CALENDAR YEAR period from among their members whose terms  
14 expire after the conclusion of that year. Three commissioners shall  
15 constitute a quorum.

16        ~~I.~~ H. A member of the commission shall serve no more than one term  
17 and is not eligible for reappointment. No commissioner, during the  
18 commissioner's tenure or for three years thereafter, shall seek or hold any  
19 other public office, serve as an officer of any political committee or employ  
20 or be employed as a lobbyist.

21        ~~J.~~ I. The commission shall appoint an executive director who shall  
22 not be a member of the commission and who shall serve at the pleasure of the  
23 commission. The executive director is eligible to receive compensation set  
24 by the board within the range determined under section 38-611. The executive  
25 director, subject to title 41, chapter 4, articles 5 and 6, shall employ,  
26 determine the conditions of employment and specify the duties of  
27 administrative, secretarial and clerical employees as the director deems  
28 necessary.

29        Sec. 3. Subject to the requirements of article IV, part 1, section 1,  
30 Constitution of Arizona, section 16-959, Arizona Revised Statutes, is amended  
31 to read:

32        16-959. Inflationary and other adjustments of dollar values

33        A. Every two years, the secretary of state shall modify the dollar  
34 values specified in the following parts of this article, in the manner  
35 specified by section 16-905, subsection J, to account for inflation: section  
36 16-941, subsection A, paragraph 2 or subsection D; section 16-942, subsection  
37 B; section 16-945, subsection A, paragraphs 1 and 2; section 16-948,  
38 subsection C; section 16-954, subsection B; section 16-955, subsection ~~G~~ F;  
39 and section 16-961, subsections G and H. In addition, the secretary of state  
40 shall make a similar inflation adjustment by modifying the dollar values in  
41 section 16-949, subsection A and section 16-954, subsection A to the nearest  
42 dollar. In addition, every two years, the secretary of state shall change  
43 the dollar values in section 16-961, subsections G and H in proportion to the  
44 change in the number of Arizona resident personal income tax returns filed  
45 during the previous calendar year.

1       B. Based on the results of the elections in the year 2002 or any  
2 quadrennial election thereafter, and within six months after such election,  
3 the commission may adopt rules in a public meeting reallocating funds  
4 available to all candidates between the primary and general elections by  
5 selecting a fraction for primary election spending limits that is between  
6 one-third and one-half of the spending limits for the election as a whole.  
7 For each office, the primary election spending limit shall be modified to be  
8 the sum of the primary and general spending limits times the selected  
9 fraction, and the general election spending limit shall be modified to be the  
10 same sum times one less the selected fraction.

11      Sec. 4. Section 38-431.08, Arizona Revised Statutes, is amended to  
12 read:

13      38-431.08. Exceptions; limitation

14      A. This article does not apply to:

15       1. Any judicial proceeding of any court or any political caucus of the  
16 legislature.

17       2. Any conference committee of the legislature, except that all such  
18 meetings shall be open to the public.

19       3. ~~The commissions on appellate and trial court appointments and~~ The  
20 commission on judicial qualifications.

21       4. Good cause exception determinations and hearings conducted by the  
22 board of fingerprinting pursuant to section 41-619.55.

23      B. A hearing held within a prison facility by the board of executive  
24 clemency is subject to this article, except that the director of the state  
25 department of corrections may:

26       1. Prohibit, on written findings that are made public within five days  
27 of so finding, any person from attending a hearing whose attendance would  
28 constitute a serious threat to the life or physical safety of any person or  
29 to the safe, secure and orderly operation of the prison.

30       2. Require a person who attends a hearing to sign an attendance log.  
31 If the person is over sixteen years of age, the person shall produce  
32 photographic identification ~~which THAT~~ verifies the person's signature.

33       3. Prevent and prohibit any articles from being taken into a hearing  
34 except recording devices,— and, if the person who attends a hearing is a  
35 member of the media, cameras.

36       4. Require that a person who attends a hearing submit to a reasonable  
37 search on entering the facility.

38      C. The exclusive remedies available to any person who is denied  
39 attendance at or ~~WHO IS~~ removed from a hearing by the director of the state  
40 department of corrections in violation of this section shall be those  
41 remedies available in section 38-431.07, as against the director only.

42      D. Either house of the legislature may adopt a rule or procedure  
43 pursuant to article IV, part 2, section 8, Constitution of Arizona, to  
44 provide an exemption to the notice and agenda requirements of this article or

1 to allow standing or conference committees to meet through technological  
2 devices rather than only in person.

3       Sec. 5. Requirements for enactment: three-fourths vote

4       Pursuant to article IV, part 1, section 1, Constitution of Arizona,  
5 sections 16-955 and 16-959, Arizona Revised Statutes, as amended by this act,  
6 are effective only on the affirmative vote of at least three-fourths of the  
7 members of each house of the legislature.

8       Sec. 6. Conditional enactment

9       This act does not become effective unless the Constitution of Arizona  
10 is amended by vote of the people at the next general election to provide for  
11 judicial appointments by the governor, subject to senate confirmation.